

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Garry L. Kittle, Jr. :
Plaintiff, :
v. : Case No. 2:05-cv-1165
The State of Ohio, et al., : JUDGE MARBLEY
Defendants. :

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On December 30, 2005, this Court received a complaint and a request to proceed *in forma pauperis* from plaintiff Garry L. Kittle. Pursuant to 28 U.S.C. §§1915 and 1915A, the Magistrate Judge recommended that the case be dismissed as frivolous, failing to state a claim, and seeking monetary relief against a defendant who is immune from such relief. The Magistrate Judge's Report and Recommendation was served on Mr. Kittle on June 16, 2006. As stated in the Report, Mr. Kittle had ten days from service of process to object to the Magistrate Judge's recommendations.

On June 23, 2006, Mr. Kittle filed the exact same complaint that he filed on December 30, 2005. Because this "new complaint" was filed within the ten-day time period in which Mr. Kittle could object to the Magistrate Judge's Report and Recommendation, this Court construes the "new complaint" as an objection to the Magistrate Judge's Report and Recommendation. Accordingly, because Mr. Kittle fails to raise any new arguments or issues in his objection, see Howard v. Secretary of Health and Human Services, 932 F.3d 505, 509 (6th Cir. 1991), this Court, after a *de novo* review of the Magistrate Judge's Report and Recommendation, adopts the Magistrate Judge's Report and

Recommendation (doc. #9) in its entirety. Thus, Mr. Kittle's objection is OVERRULED. Additionally, the motion to dismiss (doc. #12) filed by defendants L Allan Goldsberry and William Grim is MOOT, and Mr. Kittle's motion for appointment of counsel (doc. #11) is DENIED. The clerk is ordered to file the objection on the docket and close the case.

s/Algenon L. Marbley
Algenon L. Marbley
United States District Judge